IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1374 of 1997

in

SPECIAL CIVIL APPLICATIONNo 3073 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

STATE OF GUJARAT

Versus

PARSHOTTAMBHAI DHEDKABHAI PATEL

Appearance:

1. LETTERS PATENT APPEAL No. 1374 of 1997

MS.MANISHA LAVKUMAR,AGP for Appellant No.

MR HARIN P RAVAL for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE H.H.MEHTA

Date of decision: 03/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE K.R.VYAS)

1. This Letters Patent Appeal is preferred by the State of Gujarat and others (original respondents) against the decision rendered in Special Civil Application No. 3073 of 1982 dated July 31,1995 by the learned single judge allowing the petition and directing the appellants- original respondents to take appropriate action by passing necessary resolution and orders so that the candidates like the petitioner working in Arts Teachers Diploma Colleges are treated at par with those working in the Fine Arts Colleges for the period on and from the date of issuance of the resolution dated 10th July 1977 to 31st December 1985. It is not in dispute that the State Government has already granted relief to the Arts Teachers Diploma Colleges for the period on and from 1.1.1986. The learned single judge also directed the appellants herein to carry out the aforesaid direction within four months from the date of receipt of writ. As far as the present respondent (original petitioner) is concerned, the learned single judge has held that he shall be entitled to all the consequential benefits. The said judgment and order is challenged on the ground that the learned single judge could not have given general directions in favour of entire class working in Arts Teachers Diploma Colleges to be treated at par with those working in Fine Arts Colleges as the petition is filed by a single petitioner in his individual capacity and no such relief is prayed for in the petition.

2. The petitioner was working as an Assistant Lecturer in the institution of respondent no.3 i.e. College of Arts Diploma Course. On 20.6.1973, the State Government, by passing a resolution, introduced a scheme for examination for Higher Arts Drawing Examination. By this resolution, the Government also revised the syllabus and scheme of examination for Diploma Course for Arts as follows:

(1)Five Years' Diploma Course:
(i)Drawing and Painting
(ii)Sculpture
(iii)Applied Art.

(2)Two Years Duration:
(i)Drawing Master's Course renewed as
Arts Teachers Diploma.

(3)One Year Duration:
Post Diploma Art Master's Course of one year.

3. From the record, it appears that all the aforesaid courses have Foundation Courses and all students in all the branches, as stated above or any of the courses as stated above, have to study in First Year Course named as Foundation Course and this Foundation Course is common for all the students who are desirous of appearing in the examination held by the State of Gujarat and it is only after completion of the Foundation Course that the student is entitled to be admitted to the specified course of Drawing, Painting, Sculpture, Applied Arts, Drawing Course and Arts Teachers' Diploma Course ('ATD' for short).

4. The respondent (original petitioner) made a grievance in the petition about different pay scales to the Assistant Lecturers appointed in Fine Arts Colleges as well as Assistant Lecturers appointed in ATD Colleges. It is the case of the respondent that the Assistant Lecturers appointed in Fine Arts Colleges get the pay scale of Rs. 550- 900 while the Assistant Lecturers appointed in ATD Colleges get the pay scale of Rs. 450-750. It appears that the pay scale of Assistant Lecturers which was Rs. 350-600 was later on revised to Rs. 550-900 vide resolution dated 15.4.1977. The pay scale of Assistant Lecturers in ATD Colleges was Rs. 350-600 which was subsequently revised by resolution dated 25.7.1979 to Rs. 450-750. The petitioner, therefore, is making a grievance of discrimination in the matter of pay scales to the holders of the post of Assistant Lecturers teaching Foundation Course in ATD Colleges on one hand and those Assistant Lecturers teaching the same course in Fine Arts Colleges on the other hand, by contending that his grievance has not been redressed. It is the case of the petitioner that he is holding qualification of Art Master (AM) and Diploma in Painting. The petitioner has contended that the holders of the same qualification and teaching the same subject in the same course are getting higher pay scale merely because they teach in Fine Arts Colleges and the petitioner is getting less pay scale merely because he is teaching in a different college i.e. ATD College . It is further contended by the petitioner that since the nature of duties is exactly identical, holders of equal posts cannot be discriminated in the matter of pay scale only on the ground of their postings in different institutions. The petitioner has, thus, invoked Articles 14 and 16 of the Constitution of India. In substance, the petitioner contends that there is no justification to pay to Assistant Lecturers working in ATD Colleges the pay scale of Rs. 450-750 when the Assistant Lecturers working in Fine Arts Colleges are given the pay scale of

Rs. 550-900.

5. It may be stated that before the learned single judge, the respondent did not file any reply controverting the facts alleged by the respondent. The learned single judge has recorded that even during the course of arguments, no justification whatsoever has been made for the discrimination complained in the petition. Reading the judgment of the learned single judge, it appears that the learned AGP argued the case by contending that the Government has powers to pay different pay scales to holders of the same posts and had cited two decisions of the apex Court.

6. As observed earlier, after considering the arguments advanced before him, the learned single judge was of the opinion that there was no reasonable classification to make any differentiation between the Assistant Lecturers working in ATD Colleges and Fine Arts Colleges in the matter of pay scales. He accordingly allowed the petition. Hence the present appeal.

7. Ms. Manisha Lavkumar, learned AGP appearing for the appellants submitted before us that there is difference between Assistant Lecturer working in Fine Arts Colleges and Assistant Lecturer in ATD Colleges. She pointed out the difference between the requisite minimum educational qualification and nature of duties of both the categories; namely Assistant Lecturers in Fine Arts Colleges and Assistant Lecturer in ATD Colleges. The following statement will give details about both the categories:

	ATD College	Fine Arts College
Duration	2 years	5 years
Minimum Qualification:		
	Diploma in Drawing	Govt.Diploma
	Master or Art Master in Painting	
Nature of Duty:	Different	Different

Our attention is also invited to certain resolutions passed by the State Government from time to time produced along with the memo of Letters Patent Appeal.

8. At the outset, we may say that in the instant case, nothing is produced on the record of the case, namely the relevant scheme or the rules classifying two categories, namely Assistant Lecturers in Fine Arts Colleges and Assistant Lecturers in ATD Colleges fixing

their pay scales and their nature of duties etc. In absence of such relevant material, it is difficult for the Court to come to the conclusion that there is reasonable classification amongst two categories. The resolution produced along with the memo of appeal does not take us any further in the matter. The fact that the Government passed resolution dated 9.10.1987 which has been given effect from 1.1.1986 whereby the Assistant Lecturers working in Fine Arts Colleges and those working in ATD Colleges have been brought at par in the matter of pay scales, in our opinion is sufficient to show that there was no reasonable or permissible classification to differentiate between the holders of these posts. In our opinion, passing of the resolution by the State Government is relevant inasmuch as the State Government, in fact, realised the genuineness of the grievance raised by the petitioner in the petition. It is to be noted that by passing the said resolution dated 9.10.1987, effect has been given from 1.1.1986. It is the grievance of the respondent that in view of the discrimination meted out to him, resolution could have been given effect from 10.7.1977. In our opinion, there is substance in the grievance of the respondent. Once we hold that there is no reasonable classification from the very inception to make any differentiation between the Lecturers working in Fine Arts Colleges and those working in ATD Colleges in the matter of pay scales, the respondent is entitled to be treated at par with those working in Fine Arts Colleges for the period on and from the issuance of the resolution dated 10.7.1977 to 31.12.1985.

9. The learned AGP invited our attention to certain decisions of apex court reported in AIR 1974 SC 1, AIR 1968 SC 349, AIR 1989 SC 1308, AIR 1992 SC 1754 and AIR 1995 (Suppl) 149. After having gone through the aforesaid citations, it appears to us that the grievance was raised on the basis of principle of "equal pay for equal work" and for differential treatment to the persons belonging to the same class on the basis of educational qualification. By the principle laid down by the apex court, prescribing different pay scales is held to be permissible classification in view of difference in educational qualification and nature of duties. There cannot be any dispute with respect to the principle enunciated by the apex Court. However, considering the facts of the present case, nothing has been produced to show that the qualification held by the Assistant Lecturers working Fine Arts Colleges is higher in comparison to the Assistant Lecturers working in ATD Colleges. In any case, once the Government, by passing resolution dated 9.10.1987, has brought both the categories at par in the matter of pay scales, it is now

not open for the State Government to contend contrary to its own resolution dated 9.10.1987. We, therefore, see no merits in this appeal.

10. However, considering the submissions advanced by the learned AGP, we would like to modify the impugned judgment of the learned single judge giving benefits to all candidates like the petitioner from 10.7.1977 to 31.12.1985. In our opinion, the learned single judge could not have given such a relief which is quite general in nature especially when the petitioner filed petition in his individual capacity and no such prayer is prayed for in the petition. The petition is also not under Order I Rule 8 of the Civil Procedure Code nor filed by and on behalf of entire class. Mr.Raval, however, requested this Court orally to permit him to amend the petition so that other persons can get the similar benefits like the respondent (original petitioner). We are of the opinion that at a belated stage, the amendment which changes the entire nature of petition cannot be encouraged. We, therefore, reject the request of Mr. Raval to permit him to amend the original petition.

11. In the result, we partly allow this appeal by holding that the learned single judge was absolutely right in deciding the Special Civil Application on merits. We, however, modify the impugned judgment directing the appellants to pass appropriate resolution and orders so as to give benefits to all candidates like the petitioner and instead, we direct the State Government to treat the respondent (original petitioner) only at par with those working in Fine Arts Colleges for the period on and from the date of issuance of resolution dated 10.7.1977 to 31.12.1985, within three months from the date of receipt of writ.

Appeal is accordingly partly allowed with no order as to costs.

(K.R.Vyas,J.)

(H.H.Mehta,J.)

sonar/-